**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 510 of 2002**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT - Appellant**
**Versus**
**MANISHBHAI NARANDAS KARIA OWNER AND VENDOR - Respondent**

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**Appearance :**
Mr. M.A. Patel, Ld. APP for Appellant :
MR DK MODI for Respondent :
MR MD MODI for Respondent :

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**CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

**Date : 14/06/2006**

**ORAL JUDGMENT**

1. Heard Shri. Mukesh Patel, learned APP for the appellant State of Gujarat and Shri. D.K. Modi, learned counsel for the respondent / original accused.

2. The State of Gujarat – Appellant herein has preferred this appeal under section 378 of the Code of Criminal Procedure, challenging the order of acquittal dated 15/2/2002 passed by learned JMFC, Kutiyana in Criminal Case No. 77 of 1992 acquitting the present respondent/ original accused of the charges under Section 2(A)A, 2 (A) M, 7(1), 14(1), 16(1) of Prevention of Food Adulteration Act, 1954 [herein after referred to as the 'PFA Act']. This Court granted leave and admitted the appeal vide order dated 1/02/2003.

3. The facts in short deserve to be noted as under :-

3.1 The respondent is the owner of provision store named Paresh Provision Store. The respondent was at the relevant time engaged in vending edible and food items. The respondent had kept “Compounded Asafoetida” [Hing] of Shree Ramakrishna brand in sealed packets. The original complainant – Food Inspector on 14/8/1991 visited the provision store of the accused at 12.30 (noon) in presence of panch witness Sundardas Ranmandas Gumlani and with

his helper in Kutiyana, district Junagadh. After introducing himself as the Food Inspector and notifying his intention to collect the sample of food article for having it examined by the Public Analyst, he purchased 3 sealed (packed) tins of compounded Asafoetida of 250 grams each on payment of Rs.45=00. The necessary notice as per Rule 12 in Form No.6 was issued and the cash memo & receipts were obtained. They have been produced on record. The sample food article was thereafter properly sealed as per provisions of law and labels were affixed and the signature of panch witness and accused were obtained thereon. The procedure of sealing, affixing serial number etc. was observed. The panchnama was drawn. The Food Inspector- complainant sent one part of sample and the specimen of seal used to seal the sample to Public Anlayst and remaining 2 parts of the sample food article were sent to Local Health Authority. The postal acknowledgment dues have been produced and duly accepted on the record. It was the say of the complainant that he wrote two letters on 7/10/1991 and 24/10/1991 calling upon the accused to reveal and indicate the name of the manufacturing firm. These 2 letters have been exhibited at exhibit-36 and 37 respectively.

The Public Analyst opined that the food article was not conforming to the standards laid down and therefore, it was dubbed to be adulterated. After obtaining due sanction from Local Health Authority the complaint came to be lodged. The request for sanction was made on 25/11/1991 which is produced at exhibit-41 and the sanction dated 20/1/1992 is produced at exhibit-42. The Local Health Authority was informed about lodging complaint vide letter dated 18/2/1992, copy whereof is produced at exhibit-43. On 19/2/1992 Local Health Authority issued notice under Section 13(2) of PFA Act to the accused informing about his right to have the sample further tested at the end of Central Food Laboratory, that office copy of the letter is produced at exhibit-44. The postal acknowledgment receipt is produced on record. The Central Food Laboratory also certified the sample to be adulterated. After recording plea of denial,the trial had commenced. The trial court after recording evidences and hearing counsel of the respective parties and after hearing the accused under Section 313 of Criminal Procedure Code, came to the conclusion that the prosecution has not established charge beyond doubt and therefore, the accused was acquitted of the charges vide judgment & order

dated 15/2/2002, which is impugned in the present appeal.

4. Shri. Mukesh Patel, learned APP has vehemently submitted that the judgment & order deserves to be quashed and set aside as the adulteration is proved beyond doubt. Not only the Public Analyst but even the Director of Central Food Laboratory has also unequivocally opined that the sample food article was not in conformity with the standards prescribed under the law. The certificate issued by Central Food Laboratory in respect of the sample food article being a conclusive proof of evidence there was no ground for recording acquittal by the trial court. In view of this, the judgment and order of acquittal deserves to be quashed and set aside.

5. Shri. Patel has further submitted that the accused vendor was not entitled to clam any benefit of warranty under section 19(2) of the PFA Act. Shri. Patel has submitted that the prosecution has produced 2 letters on record calling upon the vendor to indicate name of original manufacturer. The vendor therefore was duty bound to disclose name of the manufacturer

as required under the law. Shri. Patel has submitted that, it has also come out from the deposition of the complainant that despite his due efforts the original manufacturer was not traceable and, therefore, on such fact the vendor can not be absolved of his liability under the law. Shri. Patel has submitted that the accused in order to avail the benefit of warranty under section 19 (2) of the PFA Act was required to lead positive evidence that the sample food article was purchased from someone else and it was sold in the same condition in which it was purchased. In absence of any invoice, bill, or other material produced by the accused it can not be said that the burden cast upon him was discharged. The accused ought to have produced some positive evidence so as to avail the benefit of warranty under section 19 (2) of the PFA Act. Shri. Patel has also submitted that the documents like letter of sanction, report of Public Analyst, report of Central Food Laboratory need not be proved and as such they have been in the nature of Government and or public document and they need no further proof and they are genuine. Shri. Patel has vehemently submitted that the benefit under section 19(2) is not available to the accused and therefore, the conviction ought to

have been recorded and the accused ought to have been dealt with in accordance with law as there is conclusive proof of adulteration in the form of Central Food Laboratory report.

6. Shri. Modi, learned counsel appearing for the respondent has submitted that the fact remains to be noted that, all along right from the moment the samples were collected and the report of Central Food Laboratory was made available, it is not the case of the prosecution that the food article in question was not in sealed packets or sealed tins. The documents produced on record in the form of invoice, purchase cash memo etc. would go to show that the food article was in a sealed packed condition and it contains label of the manufacturer. When the food article was purchased in a sealed tin and when it was also containing the label, it was the bounden duty of the prosecution to ascertain the whereabouts of the manufacturer and join him as an accused rather than remained contented after arraigned only the vendor and obviously therefore, he is entitled to the protection under section 19 (2) of PFA Act.

7. Shri. Modi has submitted that this being an acquittal appeal the accused is entitled to advance all the grounds available to him which may be different from and independent of the reasonings and grounds adopted by the trial court for acquittal. The accused has a right to support the order of acquittal on independent grounds as the entire record is before the court. Shri. Modi has submitted that even Central Food Laboratory report also mentioned in its report, in the column Physical Appearance; “the sample was received in original manufacturer's sealed plastic container closed with plastic screw cap. The container had a printed label in Gujarati language. On opening the container, the sample was found in heat sealed polythene packet.”. Thus it can be said that the sample food stuff was in an intact sealed container till it reached Central Food Laboratory. It is no one's case that the label was not legible. In fact it can be seen from the notice in the Form No.6 that the Food Inspector himself has mentioned in the column Details of Food “Shree Ramkrishna brand compounded asafoetida (sealed)”. Similarly it is mentioned in cash memo also. Exhibit-29 also contains similar endorsement by the Food Inspector himself. Shri. Modi has

further submitted that the letters at exhibit-36 and 37 can not be said to have been received by the original accused in absence of postal acknowledgment due as the first letter was purported to have been sent by registered A.D. Post and second letter was purported to have been sent under postal certificate. Neither the acknowledgment due nor certificate of posting have been produced by the prosecution on the record. Shri. Modi has submitted that the label itself is a warranty as it is prescribed in the law. He relies upon the judgment of Madras High Court in case of CHIDAMBARA RAJAN VS. STATE, reported in FAJ, Vol. IX-1988, pg. 468 in support of his submission. He also relies upon the decision of Kerala High Court in case of K.C. IBRAHIM Vs. FOOD INSPECTOR, reported in PFA Cases, 1992(1), pg. 188 in support of his submission that once label warranty is ascertained the benefits under section 19(2) is sustainable. Shri. Modi has also relied upon Apex Court decision in case of M/S. KISHAN BEEJ BHANDAR Vs. CHIF AGRICULTURAL OFFICR AND ANOTHER, reported in 2001 (2) FAC 150 in support of his submission that once it is demonstrated and established that the sample food article was in a packed sealed condition the burden stands discharged and the protection

of 19(2) becomes available to the accused.

8. This Court has perused the record and heard the counsels at length. The submission of Shri. Modi deserves consideration and acceptance. The fact remains that the Food Inspector has collected sample in a sealed condition and that fact has been reflected in all the documents produced right from the notice under Rule 12 in From No.6 up to the certificate of Central Food Laboratory. These all documents necessarily prove that the food stuff in question was collected in a sealed condition. The label container was also indicative of the fact that it was manufactured by Shree Krishna Gruh Udyog Bhandar. The letter in the form of memorandum calling upon the Food Inspector to submit papers also contained a specific request so as to indicate name of the manufacturer. These facts go to conclusively show that the benefit of section 19(2) was in fact available to the accused respondent. This Court is unable to accept the submission of Shri. Patel that the accused was required to lead positive evidence in order to avail benefit of section 19(2). The Apex Court decision in case of M/s. Kishan Beej Bhandar (supra) is applicable on all its fours to the facts of the present case. In the case

before the Apex Court it was a question of protection given to the vendor under section 30(1) (3) of the Insecticides Act, 1968. The relevant portion thereof reads as under:-

> " Section 30(1) (3)------- misbranding --- protection – appellant dealer-- licence cancelled--- the liability arising out of misbranding was not of the appellant. Unless he had any other source of information about misbranding and it has not been established the appellant is entitled to the protection of sub-Sec. (3). In the facts once the appellant's contention that it was a sealed tin in tact has been found, the burden that lay on him under the provision of sub-Sec. (3) had been satisfactorily discharged, even in the matter concerning the question of cancellation of licence and, therefore, his licence should not have been cancelled. "

9. It would be advantageous to reproduce Section 19 also so as to appreciate the purport of protection envisaged in the aforesaid sections.

"Sec. 19 . Defences which may or may not be allowed in prosecutions under this Act – (1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the good sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(2)A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves -

(a) that he purchased the article of food-

(i)in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of good while in his

possession was properly stored and that he sold it in the same state as he purchased it.]

(3)Any person by whom a warranty as is referred to [in section 14] is alleged to have been given shall be entitled to appear at the hearing and give evidence. “

10.Thus it can well be seen that the protection envisaged in these 2 sections are couched in almost similar terms. Shri. Patel has fairly submitted that both the sections are almost pari materia in terms of protection available to the vendor. In the case before the Apex Court, i.e. M/s. Kishan Beej Bhandar (supra), Honourable Court has observed as under:-

“4. The High Court took the view that by enacting sub-Sec. (1) of Sec.30 of the Act, Parliament had taken out the element of mens rea from consideration and, therefore, knowledge was not at all material. Appellant's counsel has argued that

protection of sub-Sec. (3) is available not only to prosecutions but also to every contravention of the Act and cancellation of licence for contravention of the Act is also a matter covered by sub-Sec. (3). We are inclined to accept the submission and taken the view that whether in prosecution or contravention leading to cancellation, sub-Sec. (3) applies. In that view of the matter, on the facts found that it was a full tin in a sealed condition, the liability arising out of misbranding was not of the appellant. Unless he had any other source of information about misbranding – and it has not been established the appellant is entitled to the protection of sub-Sec. (3). In the facts once the appellant's contention that it was a sealed tin in tact has been found, the burden that lay on him under the provision of sub-Sec. (3) had been satisfactorily discharged, even in the matter concerning the question of cancellation of licence and, therefore, his licence should not have been cancelled. We allow the appeal, reverse the order of the High Court and the authorities and restore the licence. The appeal is disposed of accordingly. No costs. “

11. Thus the burden if at all fastened upon the accused was considered to have been discharged the moment it was demonstrated that the sample food article was in a sealed packed condition.

12. This being an acquittal appeal this Court need not interfere with the judgment & order of acquittal unless & until it is established that sustenance of the order would result into miscarriage of justice. In absence of any such plea, this Court is of the opinion that the order of acquittal deserves to be sustained. In the result and for the aforesaid reasons, this Court is of the considered view that the order of acquittal dated 15/2/2002 passed in Criminal Case No. 77 of 1992 does not call for any interference and the appeal, therefore, deserves to be dismissed and it is dismissed accordingly.

[ S.R. BRAHMBHATT, J ]

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